FINANCIAL PLANNING COALITION

May 1, 2012

Dear Colleague,

Congress is considering legislation that could force Registered Investment Advisers to join a new self-regulatory organization (SRO) – and pay for the privilege. An SRO would add to the list of regulators that many of you would have to deal with and add a new layer of regulation.

Last week Representative Spencer Bachus (R-AL), Chairman of the House Committee on Financial Services, introduced HR 4624, the Investment Adviser Oversight Act of 2012. This bill, co-sponsored by Representative Carolyn McCarthy (D-NY), would authorize the Securities and Exchange Commission (SEC) to create one or more SROs to oversee investment advisers. The stated intent of the legislation is to improve the current level of oversight of investment advisers. For your convenience, here is a link to the full text of the bill.

While the Financial Planning Coalition strongly supports increased examinations of investment advisers, we believe that creating a costly new layer of regulation – one that will particularly harm smaller advisory firms – is not the right answer.

If passed, the bill would require many investment advisers to join a National Investment Adviser Association (NIAA) – essentially an SRO – that would have oversight and enforcement responsibilities. Investment advisers would fund the NIAA through fees. The bill allows for the creation of more than one NIAA approved by the SEC, but the Financial Industry Regulatory Authority (FINRA) is expected to act quickly to organize an NIAA. Though the bill has limited and conditional exemptions for institutional and state-regulated advisers, it will fully impact thousands of advisory firms.

The Financial Planning Coalition opposes this bill because we believe that an SRO is simply the wrong solution to address the need for increased examinations for investment advisers. An independent analysis by the Boston Consulting Group (BCG) – a widely respected organization that recently conducted an in-depth review of SEC operations – found that outsourcing oversight to an SRO would cost at least twice as much as providing the SEC with sufficient resources to increase adviser examinations. This would have a direct impact on the cost to investment advisers, particularly on small advisory firms throughout the country. The BCG study found that the average membership fee a firm would need to pay each year to support an SRO is in excess of $50,000 – which is twice as expensive as an annual user fee to fund an enhanced SEC examination program.

The Financial Planning Coalition and several allied organizations are now reviewing a cost analysis released by FINRA that attempts to counter the BCG numbers. On its face, the FINRA analysis offers little detail as to how it arrived at its markedly lower cost estimates. In contrast, the BCG study offers a transparent analysis relying on objective and public data.

But SRO oversight is about more than the financial cost to advisers. It raises issues of accountability and transparency inherent in an SRO approach. An SRO can often exercise government-like authority without government-like accountability. There are also concerns that FINRA, an organization of broker-dealers, would not have the knowledge of the investment advisory business and the experience applying a principles-based fiduciary standard that would be necessary to effectively oversee advisers. Not surprisingly, a survey conducted by BCG found that more than 80 percent of investment advisers preferred to pay a user fee for increased SEC examinations than to pay for a FINRA-IA SRO.

The Financial Planning Coalition supports a more targeted and efficient approach to closing the oversight gap. Directing the resources needed to build upon the SEC's infrastructure and 70 years of experience overseeing investment advisers is the most appropriate way to fill the oversight gap without unnecessarily burdening advisers.

The Coalition is aggressively and proactively communicating its opposition to HR 4624.

- Upon introduction of the bill, we released a statement to the press opposing the legislation.
- In anticipation of release of the bill, we have been meeting with members' offices from the House Committee on Financial Services expressing concerns about an SRO approach. Last week, we communicated our opposition to HR 4624 to all Committee members and we will continue to meet with members' offices.
- We sent an action alert to our stakeholders who are represented by members on the House Committee on Financial Services encouraging them to express their opposition to HR 4624.

We anticipate that Chairman Bachus will bring the bill to the House Committee on Financial Services in the near future for passage. We will keep you updated on activities associated with this legislation.

In the meantime, we strongly encourage those of you who have members on the House Committee on Financial Services [check to see if your representative is on the Committee], to express your opposition to HR 4624 through easy to use tools on each of the Coalition organizations' websites.

Sincerely,

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